

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

DEBORAH CARROLL et al.,

Plaintiffs and Appellants,

v.

BRISTOL PARK MEDICAL GROUP,
INC., et al.,

Defendants and Respondents.

G046113

(Super. Ct. No. 30-2009-00310972)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, David T. McEachen, Judge. Affirmed.

Law Offices of Garrett S. Gregor and Garrett S. Gregor for Plaintiffs and Appellants.

Ryan Datomi & Mosely, Richard J. Ryan, Karen K. Brent and Dawn Cushman for Defendants and Respondents.

*

*

*

In this medical malpractice action, plaintiffs and appellants Deborah Carroll and David Carroll¹ sued defendants and respondents Bristol Park Medical Group (Bristol Park) and Lucy Suwarsa, M.D. (collectively, defendants), alleging defendants negligently misdiagnosed Deborah's vulvar cancer as herpes. Nine months after Deborah first saw defendants for a lesion on her vulva, a second doctor diagnosed it as cancer and promptly performed surgery to remove Deborah's vulva, labia, and clitoris, and also six lymph nodes in her groin. A second surgery a year later revealed Deborah's cancer had metastasized and the doctor removed an additional 14 lymph nodes from Deborah's groin, two of which were cancerous.

The trial court granted defendants summary judgment based on the statute of limitations. It found Code of Civil Procedure section 340.5's² one-year limitations period began running when the second doctor informed Deborah she had cancer and needed a radical vulvectomy and sentinel lymph node mapping surgery to remove the cancer. The Carrolls contend the trial court erred because the limitations period did not start running until a year later when the second surgery revealed Deborah's cancer had metastasized and spread to her lymph nodes. In the Carrolls' view, any injury caused by defendants' failure to diagnose Deborah's cancer resulted only in nominal damages until the second surgery revealed the cancer had metastasized.

We agree with the trial court and affirm its summary judgment. Defendants' misdiagnosis allowed Deborah's cancer to progress untreated for nine months and caused her severe emotional distress when she learned the lesion defendants treated as a sexually transmitted disease was actually cancer that required major surgery.

¹ Deborah and David are wife and husband and we refer to them collectively as the Carrolls. We refer to them individually by their first names to avoid any confusion. No disrespect is intended. (*Fazzi v. Klein* (2010) 190 Cal.App.4th 1280, 1282, fn. 1.)

² All further statutory references are to the Code of Civil Procedure.

Because Deborah suffered actual and appreciable harm at that point, section 340.5's one-year limitations period started. A plaintiff may not wait until the ultimate harm occurs or the completion of all damages before filing suit, but rather must sue once any actual and appreciable harm caused by a doctor's negligence manifests itself.

I

FACTS AND PROCEDURAL HISTORY

In approximately June 2007, Deborah consulted Suwarsa at Bristol Park regarding an open sore, itching, and pain in her vaginal area. Suwarsa initially treated Deborah for yeast and other types of infections, but Deborah's condition did not significantly improve. In August 2007, Suwarsa diagnosed Deborah's condition as herpes and prescribed medication for that ailment. Deborah's condition still did not improve and therefore Suwarsa referred Deborah to Michael L. Berman, M.D., in February 2008.

During his initial examination on February 28, 2008, Berman told Deborah she did not have herpes and the lesion on her vulva was "probably" cancerous. Mark I. Hunter, M.D., also examined Deborah during her initial visit to Berman's office. Hunter too thought the lesion was cancerous and told Deborah "it should have been treated sooner." Berman scheduled Deborah for a biopsy the next day and explained the surgery and treatment she would need if the lesion was cancerous. He explained Deborah would need a radical vulvectomy, which would include removing her vulva, labia, and clitoris, some of the tissue surrounding those areas, and some lymph nodes in her groin.

Berman performed the biopsy on February 29, 2008. The initial results indicated Deborah had vulvar cancer and Berman immediately scheduled her for surgery. The laboratory results a few days later also confirmed Deborah had cancer. On March 20, 2009, Berman performed a "[p]artial radical vulvectomy [and] bilateral sentinel lymph node mapping" resulting in the removal of Deborah's vulva, clitoris, and

labia, and also six lymph nodes in her groin. Laboratory tests on the tissue confirmed Deborah had squamous cell carcinoma in her vulva, but the cancer had not spread to the lymph nodes Berman removed.

Following the surgery, Deborah saw Berman every three months for follow-up examinations. During a February 12, 2009 examination, she reported a lump in her right groin. After examining the lump, Berman scheduled a biopsy to determine whether Deborah's vulvar cancer had spread. On March 2, 2009, Berman biopsied the lump and removed 14 lymph nodes from Deborah's groin. Laboratory tests showed Deborah's vulvar cancer had metastasized and spread to two lymph nodes, but the other 12 lymph nodes Berman removed were negative. On March 5, 2009, a PET-CT scan to determine whether her cancer had spread anywhere else in her body identified "no distant disease." Deborah then underwent five weeks of radiation treatment.

On October 13, 2009, the Carrolls filed this lawsuit against Bristol Park and Suwarsa, alleging they "negligently examined, diagnosed, tested and treated" Deborah. The complaint alleged a medical negligence claim on Deborah's behalf and a loss of consortium claim on David's behalf. The Carrolls sought general and special damages, including damages for severe emotional distress caused by defendants' failure to properly diagnose and treat Deborah.

Defendants moved for summary judgment, arguing the statute of limitations barred the Carrolls' claims because they failed to file this lawsuit within one year after Berman informed them defendants misdiagnosed Deborah's cancer as herpes. The Carrolls opposed the motion, arguing they did not suffer sufficient injury to start the limitations period until a year later when they discovered Deborah's cancer had metastasized.

The trial court granted defendants' summary judgment motion, finding Deborah's cancer diagnosis in February 2008 constituted sufficient injury to start the

limitations period. The court thereafter entered judgment in defendants' favor and the Carrolls timely appealed.

II

DISCUSSION

A. *Summary Judgment Standard of Review*

Summary judgment is properly granted if there is no triable issue on any material fact and the moving party is entitled to judgment as a matter of law. (§ 437c, subd. (c); *Eriksson v. Nunnink* (2011) 191 Cal.App.4th 826, 847 (*Eriksson*).) When a defendant seeks summary judgment based on an affirmative defense, the defendant bears the initial burden to produce evidence establishing each element of the defense. (*Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4th 454, 467-468.) If the defendant fails to establish every element, the motion must be denied regardless of whether the plaintiff presented any evidence in opposition. (*Ibid.*) But if the defendant meets its initial burden, the burden shifts to the plaintiff to present evidence establishing a triable issue of material fact concerning at least one element of the affirmative defense. (*Anderson v. Metalclad Insulation Corp.* (1999) 72 Cal.App.4th 284, 290.)

A triable issue of material fact exists “‘if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.’ [Citation.] Thus, a party ‘cannot avoid summary judgment by asserting facts based on mere speculation and conjecture, but instead must produce admissible evidence raising a triable issue of fact. [Citation.]’ [Citation.]” (*Dollinger DeAnza Associates v. Chicago Title Ins. Co.* (2011) 199 Cal.App.4th 1132, 1144-1145 (*Dollinger*).)

On appeal following the grant of summary judgment, we review the record de novo. (*Eriksson, supra*, 191 Cal.App.4th at p. 848.) The trial court’s stated reasons

for granting summary judgment are not binding on us because we review the court's ruling, not its rationale. (*Dollinger, supra*, 199 Cal.App.4th at p. 1144.)

B. *The Trial Court Properly Granted Defendants Summary Judgment*

1. The Medical Malpractice Statute of Limitations

Section 340.5 establishes the statute of limitations for all claims against a health care provider based on professional negligence. The parties agree that section provides the controlling statute of limitations for Deborah's medical malpractice claim.³

In pertinent part, section 340.5 states, "the time for the commencement of [a medical malpractice] action shall be three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first." "Section 340.5 creates two separate statutes of limitations, both of which must be satisfied if a plaintiff is to timely file a medical malpractice action. First, the plaintiff must file within one year after she first "discovers" the injury and the negligent cause of that injury. Secondly, she must file within three years after she first experiences harm from the injury. . . .' [Citation.]" (*Dolan v. Borelli* (1993) 13 Cal.App.4th 816, 824-825, italics omitted.)

Under section 340.5 an "injury" triggers both time limitations. Consequently, what constitutes an injury is crucial to correctly applying the statute. (*Larcher v. Wanless* (1976) 18 Cal.3d 646, 650 (*Larcher*).) The word injury in section 340.5 is a "word of art" that "refer[s] to the damaging effect of the alleged wrongful act and not to the act itself [because] . . . '[t]he mere breach of a professional

³ David's loss of consortium claim depends on Deborah's professional negligence claim. If Deborah's claim fails for any reason, David's claim also necessarily fails. (*Chavez v. Glock, Inc.* (2012) 207 Cal.App.4th 1283, 1315-1316; *Tverberg v. Fillner Construction, Inc.* (2012) 202 Cal.App.4th 1439, 1443, fn. 3; *Tucker v. CBS Radio Stations, Inc.* (2011) 194 Cal.App.4th 1246, 1256.) Accordingly, our analysis will refer to Deborah's injury and claim for ease of reference.

duty, causing only nominal damages, speculative harm, or the threat of future harm — not yet realized — does not suffice to create a cause of action for negligence.’ . . . Until the patient ‘suffers appreciable harm’ as a consequence of the alleged act of malpractice, he cannot establish a cause of action. “‘It follows that the statute of limitations does not begin to run against a negligence action until some damage has occurred.’” [Citations.]” (*Larcher*, at pp. 655-656, fn. 11.)

“‘[A] plaintiff’s injury occurs ‘at the point at which “appreciable harm” was first manifested,’” that is, when the plaintiff suffers “not only actual damage but that the damage has made itself known in some outward fashion.” (*Marriage & Family Center v. Superior Court* (1991) 228 Cal.App.3d 1647, 1652 (*Marriage & Family Center*).)

“‘Each case necessarily will turn on its own particular circumstance. It could well be that an injury or pathology will not manifest itself for some period after the last treatment by a physician. On the other hand, that injury or pathology may manifest itself and the patient will suffer known appreciable harm at a time prior to the “ultimate” result. In the latter case, the . . . period will start to run at the point at which the “appreciable harm” is first manifested.’ [Citation.]” (*Mason v. Marriage & Family Center* (1991) 228 Cal.App.3d 537, 543 (*Mason*).)

Section 340.5’s reference to injury has the same meaning in both the one-year and three-year provisions. (*Larcher, supra*, 18 Cal.3d at p. 658, fn. 14.)

2. The Statute of Limitations Barred Deborah’s Medical Malpractice Claim

The parties agree Deborah filed her lawsuit less than three years after she suffered any injury caused by defendants’ negligence and therefore this appeal turns on section 340.5’s one-year limitations period. Defendants contend the one-year period bars Deborah’s claim because she filed suit approximately 20 months after Berman advised her defendants misdiagnosed her cancer and she needed a radical vulvectomy and sentinel lymph node mapping surgery to remove the cancer. Deborah contends she

timely filed suit approximately seven months after she suffered the only appreciable injury defendants' negligence caused — the metastasization of her cancer. We agree with defendants.

The injury caused by a physician misdiagnosing a latent or hidden disease manifests itself for section 340.5's purposes when the disease is accurately diagnosed. (*Garabet v. Superior Court* (2007) 151 Cal.App.4th 1538, 1550 [““severe damage which does not show itself (hidden cancer, for instance) is not ‘injury’ until it is found by diagnosis””]; *Marriage & Family Center, supra*, 228 Cal.App.3d at p. 1654 [“although actual damage may have been done to the plaintiff, no ‘injury’ occurs until there is some evident harm or detrimental effect”]; *Steingart v. White* (1988) 198 Cal.App.3d 406, 414-416 (*Steingart*).)

In *Steingart*, the plaintiff consulted the defendant doctor because she noticed a lump in her breast. The defendant diagnosed the lump as a benign cyst and told the plaintiff not to worry. Three years later, the plaintiff noticed the contour of her breast changed in the area near the lump and she consulted a different doctor. (*Steingart, supra*, 198 Cal.App.3d at pp. 409-410.) The second doctor performed a lumpectomy that revealed the plaintiff had “‘Stage II’ breast cancer.” (*Id.* at p. 410.) The plaintiff then underwent “a radical mastectomy involving her right breast and 18 auxiliary lymph nodes.” (*Ibid.*) The plaintiff filed a malpractice lawsuit more than four years after the defendant's misdiagnosis, but less than one year after the proper diagnosis. The trial court granted the defendant doctor summary judgment based on section 340.5's statute of limitations, but the Court of Appeal reversed. (*Steingart*, at pp. 410-411, 417.)

The *Steingart* court explained the plaintiff's injury for section 340.5's purposes was not her breast cancer, but rather “the damaging effect or appreciable harm arising out of” the defendant's negligent failure to accurately and timely diagnose the cancer. (*Steingart, supra*, 198 Cal.App.3d at pp. 416-417.) The appellate court further explained the injury did not manifest itself until the second doctor made the correct

diagnosis. Before that point, the defendant doctor told the plaintiff the lump in her breast was a benign cyst. (*Id.* at pp. 414-415.) Accordingly, the *Steingart* court concluded the plaintiff satisfied section 340.5's one-year limitations period because the lumpectomy that revealed her injury and its negligent cause occurred less than one year before she filed suit. (*Steingart*, at pp. 415-416.)

Here, as in *Steingart*, Deborah's injury is not her vulvar cancer but rather the damaging effect of defendants' failure to timely and properly diagnose the cancer. Indeed, nothing defendants did caused Deborah's cancer. But their failure to properly and timely diagnose her condition not only allowed the cancer to progress untreated for approximately nine months, it also caused Deborah severe emotional distress when she learned she had cancer that should have been treated nine months earlier. To treat her cancer Deborah had to undergo a radical vulvectomy and sentinel lymph node mapping surgery to remove her vulva, clitoris, and labia, and also six lymph nodes in her groin.

Steingart's definition of injury in the context of misdiagnosed cancer compels the conclusion defendants met their initial burden on their summary judgment motion by presenting evidence showing Berman properly diagnosed Deborah's vulvar cancer and performed surgery to remove it by March 2008. At that point, the damaging effect of defendants' failure to properly and timely diagnose Deborah's cancer manifested itself and Deborah knew defendants' negligence caused her injury. Accordingly, section 340.5's one-year limitations period required Deborah to file suit by March 2009, but she failed to do so.

Deborah disputes the foregoing analysis and contends any injury she suffered in 2008 merely gave rise to nominal damages and therefore did not start the one-year limitations period. In Deborah's view, the injury that gave rise to her claim was the "metastatic disease" that first manifested itself in March 2009 when Berman conducted the second surgery and discovered Deborah's cancer had metastasized. Deborah contends she timely filed suit approximately seven months later. This argument

fails because Deborah cannot extend the limitations period by ignoring various aspects of her injury or narrowly construing the injury on which she based her claim.

Any actual and appreciable harm will start the limitations period running. (See *Davies v. Krasna* (1975) 14 Cal.3d 502, 514 [“the infliction of appreciable and actual harm, however uncertain in amount, will commence the statutory period”]; *Budd v. Nixen* (1971) 6 Cal.3d 195, 201, superseded in part by § 340.6 [“The cause of action arises . . . before the client sustains all, or even the greater part, of the damages occasioned by his attorney’s negligence. [Citations.] Any appreciable and actual harm flowing from the attorney’s negligent conduct establishes a cause of action upon which the client may sue”]; *Larcher, supra*, 18 Cal.3d at p. 656, fn. 11 [“*Budd* was an attorney malpractice case, but its rationale seems equally applicable to medical malpractice”].)

Moreover, a plaintiff need not suffer his or her “ultimate harm” for either of section 340.5’s limitations periods to start running. (*Hills v. Aronsohn* (1984) 152 Cal.App.3d 753, 762 (*Hills*); *Mason, supra*, 228 Cal.App.3d at p. 543 [“injury or pathology may manifest itself and the patient will suffer known appreciable harm at a time prior to the “ultimate” result. In [that] case, the . . . period will start to run at the point at which the “appreciable harm” is first manifested”].)

In *Hills*, the defendant doctor injected silicone into the plaintiff’s breasts. Several years later, the plaintiff consulted a different doctor after she noticed lumps and experienced soreness in her breasts. That doctor diagnosed the symptoms as ““typical . . . of what one sees following silicone injection[s].”” A year later, another doctor diagnosed the plaintiff with “silicone granulomatosis due to silicone injections” and discussed surgery to remove the silicone lumps. The plaintiff had a bilateral mastectomy two years later and sued the defendant doctor for negligently administering the injections a year after the surgery. (*Hills, supra*, 152 Cal.App.3d at pp. 756-757.) In affirming the trial court’s decision granting the defendant doctor summary judgment based on the statute of limitations, the *Hills* court “reject[ed the plaintiff’s] conclusion that she did not

experience injury until she suffered her ultimate harm in the form of the subcutaneous mastectomy.” (*Id.* at p. 762.) Instead, the Court of Appeal concluded the damaging effect of the defendant doctor’s negligence manifested itself when the plaintiff first noticed the lumps and soreness in her breasts and consulted a different doctor. The fact the plaintiff later suffered additional harm did not delay the commencement of the limitations period. (*Id.* at pp. 762-763.)

Here, as in *Hills*, Deborah may have suffered her ultimate harm in March 2009, when Berman performed a second surgery and discovered her cancer had metastasized. But she nonetheless suffered actual and appreciable harm sufficient to start the one-year limitations period a year earlier when Berman first informed her she had cancer and needed a radical vulvectomy and sentinel lymph node mapping surgery to treat the disease. As Deborah concedes, “being diagnosed with the disease of cancer is a traumatic event, and . . . having the disease of cancer is evidence that the person’s body is being appreciably harmed by a serious disease” Accordingly, by failing to properly diagnose Deborah’s cancer, defendants not only allowed the disease to “appreciably harm[]” her body for an additional nine months before she received any treatment, but also caused her severe emotional distress when she learned the lesion defendants misdiagnosed was actually cancer. Deborah suffered actual and appreciable harm at that point and the one-year limitations period began running even though she later suffered additional harm. (C.f. *Leonard v. John Crane, Inc.* (2012) 206 Cal.App.4th 1274, 1289 [“A client may not . . . wait to see how severe the damage will become before filing suit”].)

In a further attempt to delay the start of the limitations period, Deborah argues defendants’ negligence gave rise to two causes of action that were based on two separate injuries and accrued at two different times. First, she contends she had a cause of action based on “the misdiagnosis of skin lesions” that caused no measurable injury because it simply caused her to “appl[y] lotions and creams to an area that did not need

it.” Second, Deborah contends she had a separate cause of action based on “the failure to diagnose cancer and its spread” that caused her metastatic cancer and was not discovered until March 2009 when Berman performed his second surgery. According to Deborah, she did not assert the first cause of action and timely filed the second one. This argument fails for three reasons.

First, defendants’ misdiagnosis of Deborah’s skin lesion and their failure to diagnose her cancer constitute one negligent act giving rise to just one cause of action. Under California’s primary right theory, “a ‘cause of action’ is comprised of a ‘primary right’ of the plaintiff, a corresponding ‘primary duty’ of the defendant, and a wrongful act by the defendant constituting a breach of that duty. [Citation.] The most salient characteristic of a primary right is that it is indivisible: the violation of a single primary right gives rise to but a single cause of action. [Citation.]” (*Crowley v. Katleman* (1994) 8 Cal.4th 666, 681.) Here, Deborah had a single primary right to be free from defendants’ negligence in treating the lesion and any breach of that right gave rise to just one cause of action no matter how many different occasions or multiple ways defendants breached that primary right. (*Bay Cities Paving & Grading, Inc. v. Lawyers’ Mutual Ins. Co.* (1993) 5 Cal.4th 854, 860 [“Bay Cities had one primary right — the right to be free of negligence by its attorney in connection with the particular debt collection for which he was retained. He allegedly breached that right in two ways, but it nevertheless remained a single right.”]; *Pointe San Diego Residential Community, L.P. v. Procopio, Cory, Hargreaves & Savitch, LLP* (2011) 195 Cal.App.4th 265, 274-275 [“Each plaintiff . . . had one primary right — the right to be free of negligence by their attorneys in connection with the litigation for which they were retained. [Citation.] Plaintiffs alleged their attorneys breached that right in multiple ways, but it nevertheless remained a single right”].)

Second, this argument simply restates the nominal damages argument we rejected above — that is, Deborah did not suffer any more than nominal damages until

Berman's second surgery revealed Deborah's cancer had metastasized and therefore the limitations period did not start running until the surgery in March 2009.

Third, although one breach of duty may give rise to two causes of action when the breach caused two “qualitatively different” injuries, Deborah failed to show she suffered two qualitatively different injuries. (*Pooshs v. Philip Morris USA, Inc.* (2011) 51 Cal.4th 788, 792 (*Pooshs*).) *Pooshs* involved a claim by a smoker against a tobacco company. The plaintiff initially suffered chronic obstructive pulmonary disease (COPD) and periodontal disease caused by her tobacco use, but did not sue. Years later, she developed lung cancer and sued the tobacco company, which argued the statute of limitations barred the claim because the limitations period started when the plaintiff was first diagnosed with COPD. (*Id.* at pp. 791-792.) For summary judgment purposes, the parties agreed “COPD is a separate illness, which does not pre-dispose or lead to lung cancer and that it has nothing medically, biologically, or pathologically to do with lung cancer.” (*Id.* at pp. 801-802, 792.) Assuming without deciding the factual question of whether COPD and lung cancer are separate and unrelated diseases, the Supreme Court held “when a later-discovered disease is separate and distinct from an earlier-discovered disease, the earlier disease does not trigger the statute of limitations for a lawsuit based on the later disease.” (*Id.* at p. 792.)

Pooshs does not apply here because Deborah failed to show the metastasized cancer she suffered in 2009 was “separate and unrelated” to the vulvar cancer diagnosed in 2008. Because Deborah's complaint did not distinguish between the metastasized and vulvar cancers when it broadly alleged a single medical malpractice claim based on defendants' failure to properly “examine[], diagnose[], test[], and treat[]” Deborah, defendants' initial burden on their summary judgment motion only required them to show Deborah suffered some actual and appreciable harm in 2008 that started the limitations period. (*Westlye v. Look Sports, Inc.* (1993) 17 Cal.App.4th 1715, 1738 [the initial burden only requires a defendant seeking summary judgment to address issues

raised in the plaintiff's complaint].) Once defendants met that burden, the burden shifted to Deborah to show a triable issue of fact existed on whether the metastasized and vulvar cancers were separate and distinct diseases giving rise to separate causes of action that accrued at different times. (*Varshock v. Department of Forestry & Fire Protection* (2011) 194 Cal.App.4th 635, 651 ["Where, as here, an affirmative defense contains an exception, a defendant must also negate the exception as part of its initial burden on summary judgment *if, but only if*, the complaint alleges facts triggering potential applicability of the exception" (italics added)]; *Westlye*, at pp. 1739-1740.) Deborah presented no evidence to show the metastasized and vulvar cancers were separate and distinct diseases.

Deborah next argues a triable issue of fact exists on when she reasonably should have discovered the injury caused by defendants' failure to properly diagnose her cancer and therefore when section 340.5's one-year limitations period began to run. In Deborah's view, once she learned defendants negligently failed to diagnose her cancer, she diligently sought to discover any injury that negligence caused because she had regular follow-up examinations as Berman recommended and promptly reported the lump in her groin to Berman. Deborah contends there was nothing else she could have done to discover her metastatic cancer any earlier than March 2009. This argument fails because it assumes the metastasization of Deborah's cancer was her only injury and ignores the actual and appreciable harm she suffered in March 2008 when Berman first diagnosed the cancer defendants treated as herpes. Any difficulty Deborah experienced in discovering the additional harm she suffered did not delay the limitations period after it already started running.

Finally, Deborah argues *Artal v. Allen* (2003) 111 Cal.App.4th 273, controls because it supports her contention she suffered only nominal damages until March 2009 when the second surgery revealed her cancer had metastasized. Deborah misreads the case. *Artal* did not address whether a plaintiff suffered actual and

appreciable harm sufficient to start section 340.5's one-year limitation period. Instead, the case addressed whether the plaintiff exercised reasonable diligence in seeking to discover the negligent cause of her injury. (*Artal*, at pp. 280-281.) When and how Deborah discovered defendants' negligence is not at issue and therefore *Artal* does not apply.

III

DISPOSITION

The judgment is affirmed. Defendants shall recover their costs on appeal.

ARONSON, ACTING P. J.

WE CONCUR:

IKOLA, J.

THOMPSON, J.